IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5989 of 1996
With
SPECIAL CIVIL APPLICATION No. 10143 of 1996

For Approval and Signature:
HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SECRETARY LOHANA VIDYARTHI BHAWAN - Petitioner(s)
Versus
MD MANKAD OR HIS SUCCESSOR & 2 - Respondent(s)

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Appearance :
MR RC KAKKAD for Petitioner(s) : 1,
MS MINI NAIR, AGP for Respondent(s) : 1,
MR MAHENDRA VYAS for MR PN BAVISHI for Respondent(s) : 2,
MS SEJAL K MANDAVIA for Respondent(s) : 3,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 25/06/2007

COMMON ORAL JUDGMENT

These two petitions arise from Building Permission No.26/94-95 granted by the respondent-

Keshod Municipality (hereinafter referred to as, **“the Municipality”**) to the petitioner, a public charitable trust (hereinafter referred to as, **“the Trust”**) in respect of commercial construction made on its land plot No.26 admeasuring 2894 sq.meters situated at Keshod.

By Permission No.24/94-95 dated 6th May, 1994 granted by the Municipality, the Trust had been permitted to construct certain shops on the aforesaid land bearing plot No.26. By further Permission No.26/94-95 dated 14th September, 1995, the permission was renewed upto 6th May, 1996. Feeling aggrieved by the said Permission and the construction put up by the Trust, the respondent No.3, the proprietor of one M/s. Kamnath Furniture raised objections before the District Collector, Junagadh. According to the said respondent, the Municipality had granted building permission to the Trust in violation of the Building Regulations and the procedure in so far as the approved plans did not make adequate provisions for parking the vehicles. The said application was entertained by the District Collector, Junagadh. In

exercise of powers conferred by Section 258(1) of the Gujarat Municipalities Act, 1963 (hereinafter referred to as, **"the Act"**), the District Collector, by his order dated 15th July, 1996, issued permanent injunction against the operation of the aforesaid Permission No.26/94-95 dated 14th September, 1995. It was further directed that while processing any application for building permission, the Municipality shall obtain opinion of the Deputy Town Planner, Junagadh and shall grant permission for raising construction in accordance with the opinion of the said authority.

Feeling aggrieved, the Trust has preferred the above Special Civil Application No.5989/1996. Pending the said Special Civil Application No.5989/1996, the Trust approached the Municipality for renewal of the permission afresh. In view of the pendency of the above Special Civil Application No.5989/1996 the said application came to be rejected on 2nd November, 1996. Feeling aggrieved, the Trust has preferred the above Special Civil Application No.10143/1996.

The two questions that arise in these petitions are, (1) Whether the District Collector had power to entertain the application made by the respondent No.3 and to issue orders in exercise of the power conferred by Section 258(1) of the Act; and (2) Whether the District Collector was justified in directing the Municipality to obtain prior permission of the Chief Town Planner, Junagadh.

Undoubtedly, Section 258(1) of the Act empowers the District Collector to suspend, inter alia, the execution of any order or resolution of a Municipality which is likely to cause injury or annoyance to the public or is unlawful. Hence, in my opinion, the District Collector is indeed empowered to act in case of an illegal order or resolution of the Municipality or in case of an order or resolution that causes injury or annoyance to the public.

As to the opinion of the Chief Town Planner, the District Collector has, in the impugned order, observed that the Keshod Municipality has been declared by the State Government as Area Development

Authority. Any construction in the Municipal area requires the opinion of the Deputy Town Planner.

Mr.Kakkad has not been able to assail the aforesaid observations made by the District Collector. Thus, it appears that the procedure legally established required an opinion by the Deputy Town Planner. It is not in dispute that the Municipality did not obtain such opinion before the aforesaid building permission was granted to the Trust. The question also arises, whether the respondent No.3 had a right to complaint against a building permission or demand an adequate parking place in a construction plan. I am of the opinion that the respondent No.3 being a resident of the city of the Keshod town would necessarily be an affected party in case of haphazard parking of the vehicles made on the public road or margin lands or common passages. He, therefore, had a right to agitate against the building permission where the plans did not provide for adequate parking place.

As recorded hereinabove, the building permission

granted to the Trust has expired long ago. In the mean time, a substantial change has been brought about in building regulations. As to the requirement for adequate parking area, no discussion is required.

I am informed that the Trust has constructed as many as 77 shops on the aforesaid plot No.26. Undoubtedly, those shop owners or occupants, the staff hired by them and the people visiting the shops will require space for parking their vehicles. Unless adequate arrangement is made for such parking, these people would be required to park their vehicles in margin land or on public road thereby inducing traffic congestion.

Now that the Building Permission No.26/94-95 has expired long ago, the Trust shall have to approach the concerned authority for permission afresh or renewal of permission. When such application is processed, the Municipality will have to take decision in accordance with the existing building rules. The cause of action, therefore, shall not survive.

For the aforesaid reasons, both these petitions are dismissed. Rule nisi issued in each petition is discharged.

It is clarified that any application for building permission submitted by the Trust or application for renewal of the building permission already granted, shall be processed in accordance with law. The prior opinion of the Deputy Town Planner also should be taken. While granting such permission, the Municipality shall insist that the Trust provides adequate parking for the vehicles keeping in view the extent of construction and the number of people enjoying such construction.

Registry will maintain copy of this judgment in each petition.

(Ms. R.M.Doshit, J.)

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